

**IN THE CIRCUIT COURT FOR THE TWELFTH JUDICIAL CIRCUIT
WILL COUNTY, ILLINOIS**

LEONARD MCCUBBIN

PLAINTIFF,

v.

WESLEY TOWNSHIP

DEFENDANT.

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Case No. 19CH1048

COMPLAINT

NOW COMES Plaintiff, LEONARD MCCUBBIN, by his attorneys, AMBROZIAK & ASSOCIATES, and brings this suit to Overturn Defendant's refusal, and willful violation of the Illinois Freedom of Information Act, to respond to Plaintiff's Freedom of Information Act requests. In support of this Complaint, Plaintiff states as follows:

INTRODUCTION

1. Pursuant to fundamental philosophy of the American constitutional form of government, it is the public policy of the State of Illinois that all persons are entitled to full and complete information regarding the affairs of government and the official acts and policies of those who represent them as public officials and public employees consistent with the terms of the Illinois Freedom of Information Act (hereafter "FOIA"). 5 ILCS 140/1.

2. Restraints on access to information to the extent permitted by FOIA are limited exceptions to the principle that the people of this state have a right to full disclosure of information relating to the decisions, policies, procedures, rules, standards and other aspects of governmental activity that affect the conduct of government and the lives of the people. 5 ILCS 140/1.

Initial case management set for
11/04/2019 at: 9:00 a.m.

3. All public records of a public body are presumed to be open to inspection or copying. Any public body that asserts that a record is exempt from disclosure has the burden of proving by clear and convincing evidence that it is exempt. 5 ILCS 140/1.2.

4. Each public body shall, promptly, either comply with or deny a request for public records within 5 business days after its receipt of the request, unless the time for response is properly extended under subsection (e) of this Section. *Denial shall be in writing as provided in Section 9 of this Act. Failure to comply with a written request, extend the time for response, or deny a request within 5 business days after its receipt shall be considered a denial of the request.* 5 ILCS 140/3(d). Emphasis added.

5. The time for response under this Section may be extended by the public body *for not more than 5 business days from the original due date* The person making a request and the public body may agree in writing to extend the time for compliance for a period to be determined by the parties. If the requester and the public body agree to extend the period for compliance, a failure by the public body to comply with any previous deadlines shall not be treated as a denial of the request for the records. 5 ILCS 140/3(e). Emphasis added.

6. *Each public body denying a request for public records shall notify the requester in writing of the decision to deny the request, the reasons for the denial, including a detailed factual basis for the application of any exemption claimed, and the names and titles or positions of each person responsible for the denial. Each notice of denial by a public body shall also inform such person of the right to review by the Public Access Counselor and provide the address and phone number for the Public Access Counselor. Each notice of denial shall inform such person of his right to judicial review under Section 11 of this Act.* 5 ILCS 140/9(a). Emphasis added.

7. "Except as to causes the court considers to be of greater importance, proceedings arising under this Section shall take precedence on the docket over all other causes and be assigned for hearing and trial at the earliest practicable date and expedited in every way" 5 ILCS 140/11.

PARTIES

8. Plaintiff, LEONARD MCCUBBIN, is the FOIA requester in this case. Plaintiff is neither a recurrent requester, nor does he request documents from Defendant for a commercial purpose as defined by 5 ILCS 140/2.

9. WESLEY TOWNSHIP (hereafter "WESLEY") is a public body located in Will County, Illinois.

10. The records sought are non-exempt public records of WESLEY.

11. WESLEY willfully and intentionally violated the FOIA by Defendant's ongoing and constant refusal to, and failure to properly respond to the FOIA request shown below and in the attached Exhibits hereto and incorporated herein.

12. The aforementioned paragraphs 1-10 are incorporated in Count I as if fully restated therein.

COUNT I **FOIA Request - July 1, 2019**

13. On July 1, 2019, Plaintiff LEONARD MCCUBBIN submitted a request pursuant to the FOIA to Defendant Wesley for security camera footage taken on June 13, 2019. See Exhibit A. Plaintiff submitted the July 1, 2019 request to the Wesley Township FOIA Officer at the following two email addresses: wesleytwp2017@outlook.com and wesleysuper2017@outlook.com.

14. On July 3, 2019, Plaintiff received an email reply from the Wesley Township Clerk, Sarah M. Norton, stating that Plaintiff's FOIA request will be provided in "...approximately one week after receiving [Plaintiff supplied] jump drive." See Exhibit B

15. On July 5, 2019, Plaintiff replied via email to Wesley Township Clerk Sarah Norton's email response by informing her that the deadline for a FOIA request response is five (5) business days from receipt of the request. See Exhibit C. Plaintiff expressed that he would agree for the request to be fulfilled by July 9, 2019, granting the Defendant one extra day past the original due date of July 8, 2019 to respond. At 3:00 p.m. that same day, Plaintiff delivered an external hard drive to WESLEY for the purpose of transferring the requested video onto it. See Exhibit C.

16. On July 6, 2019, Sarah Norton notified Plaintiff that the FOIA requested video would be mailed on July 17, 2019, twelve (12) business days after receipt of the original request. See Exhibit D.

17. On July 7, 2019, Plaintiff instructed Sarah Norton not to mail the external hard drive. Plaintiff expressed to Ms. Norton that he wished to pick up the hard drive on July 9, six (6) business days after Defendant's receipt of the FOIA request. See Exhibit E. Defendant WESLEY did not make the requested video available for Plaintiff on July 9.

18. As a result, by July 10 Plaintiff emailed both wesleytwp2017@outlook.com and wesleysuper2017@outlook.com to inform Defendant that his requested FOIA response was long overdue and that he wished to pick up the requested video response that day at the Township Hall. See Exhibit F. To date, no reply to Plaintiff's July 10 email has been forwarded to Plaintiff.

19. As of the date of this filing, Defendant WESLEY has not responded to Plaintiff's July 1, 2019 FOIA request.

20. By not responding to Plaintiff's request in the five-day timeframe imposed by 5 ILCS 140/3(d), Defendant failed to comply with Plaintiff's July 1, 2019 FOIA request. As such, Defendant's inaction constituted a denial of request under 5 ILCS 140/3(d). Accordingly, Defendant violated the FOIA by not providing justification for why Plaintiff's request was denied, as required under 5 ILCS 140/9(a).

21. Furthermore, Defendant improperly attempted to extend the time allowed for a FOIA request response by having informed Plaintiff that the request will be responded to on July 17, 2019. According to 5 ILCS 140/3(e), Defendant may extend the time allowed for a response for not more than 5 business days from original due date. Here, the original due date for the request is July 8, 2019, five business days after the original July 1, 2019 request. Defendant willfully attempted to extend the time allowed by statute for a response by a total of seven (7) business days past the original due date for this request.

WHEREFORE, LEONARD MCCUBBIN Prays that this Honorable Court grant the following relief:

- A. In accordance with 5 ILCS 140/11(h) of the Freedom of Information Act, afford this case precedence on the Court's docket except as to causes the Court considers to be of greater importance, assign this case for hearing and trial at the earliest practicable date, and expedite this case in every way; and
- B. Declare that the WESLEY TOWNSHIP has violated the FOIA; and
- C. Order the WESLEY TOWNSHIP to produce the requested records; and
- D. Enjoin the WESLEY TOWNSHIP from withholding non-exempt public records under FOIA; and

- E. Order the WESLEY TOWNSHIP to pay civil penalties; and
- F. Award Plaintiffs reasonable attorneys' fees and costs; and
- G. Award such other relief the Court considers just and equitable.

RESPECTFULLY SUBMITTED

/S/ Denise M. Ambroziak
Denise M. Ambroziak
One of the Attorneys for Plaintiff

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EXHIBIT A

Wesley Township FOIA Officer

21333 W Ballou Rd

Wilmington, Il. 60481

July 1, 2019

Dear FOIA Officer:

This is a request under the Freedom of Information Act for records showing:

- *All security camera footage on June 13, 2019. According to Township Supervisor all Video are backed up to a Township retained external drive, therefore I do know that the records do exist. Please furnish the requested information in the time frame set forth on the FOIA Act.*
- *I'm requesting that all video be unedited or altered, original time and date stamps remain intact.*

*Please send me the records in an electronic format. If you are unable to send the records in electronic formats via email as I requested, **please contact me and I will provide a portable thumb drive.** I am not making this request for a commercial purpose.*

I am requesting that this FOIA be addressed and processed in compliance of all FOIA Laws

Thank you,

Leonard McCubbin



EXHIBIT B

On Wed, Jul 3, 2019 at 1:22 PM Wesley twp2017 <wesleytwp2017@outlook.com> wrote:

Re: Freedom of information Act request to Wesley Township dated July 1, 2019

Dear Mr. McCubbin:

The purpose of this correspondence is to respond to your recent request for information from Wesley. Attached please find the materials that are responsive to your request.

1 - All security camera footage on June 13, 2019. According to Township Supervisor all Video are backed up to a Township retained external drive, therefore I do know that the records do exist. Please furnish the requested information in the time frame set forth on the FOIA Act.

Wilmington Police Detective Jurgens was contacted regarding the video copied by Wilmington Police Office Castro being requested to which he replied the video of the incident is involved in an open case and therefore not releaseable. Therefore video footage requested will be copied up to and after the police involved incident on June 13, 2019. Please provide the township with a jump drive. The download will be provided in approximately one week after receiving the jump drive.

Wesley Township is committed to transparency in government. To the extent that we have documents responsive to your request, we have produced them. However, to the extent we do not have such documents, such as cancelled checks or payment receipts, your request is denied. I am the person responsible for the denial of your request. You may appeal this decision to the Public Access Counselor of the Illinois Attorney General's Office. The Public Access Counselor may be contacted at 1-877-299-FOIA or by correspondence to the Public Access Counselor, Office of the Illinois Attorney General, 500 S. 2nd Street, Springfield, IL 62702.

Very truly yours,

Sarah M Norton

Wesley Township Clerk

21333 W. Ballou Road

Wilmington, IL 60481

Wesleytwp2017@outlook.com

Office: 815.476.7869

Cell: 815.450.0519

EXHIBIT C

From: Leonard McCubbin [REDACTED]

Date: 7/5/19 12:04 PM (GMT-06:00)

To: Wesley twp2017 <wesleytwp2017@outlook.com>, Wesley Super2017 <wesleysuper2017@outlook.com>

Subject: Re: Freedom of Information Act request to Wesley Township dated July 1, 2019

The timeline for filling the FOIA request is 5 business days. I will drop off an external drive to the Township Hall today Friday July 9, 2019. I will expect to have them at the monthly meeting on Tuesday July 9, 2019.

I know that the same recording have been subpoenaed by the Will County Court, and must be produced prior to July 11, 2019. Failure to provide the recordings I FOIA'd according to The FOIA Act will result in the filing of a lawsuit.

Please provide the requested information, the Township has enough legal problems, and does not need the additional expense.

Thank You

Leonard McCubbin

[REDACTED]

From: leonard [REDACTED]

Sent: Friday, July 5, 2019 3:44 PM

To: Wesley twp2017; Wesley Super2017

Subject: Re: Freedom of Information Act request to Wesley Township dated July 1, 2019

The external drive was dropped off to the township Hall at 3:00 p.m. today placed on Joanne's desk.

EXHIBIT D

On Sat, Jul 6, 2019 at 9:27 PM Wesley twp2017 <wesleytwp2017@outlook.com> wrote:

Mr. McCubbin,

I wanted to let know that your video will be mailed to you on July 17, 2019.

Yours Truly,

Sarah Norton

Wesley Township Clerk

EXHIBIT E

On Sun, Jul 7, 2019 at 8:51 AM Leonard McCubbin [REDACTED] wrote:

I do not want it mailed. I will pick it up at the Township hall. The FOIA Act requires you to furnish the requested information within 5 days of the request. I have already given you until Tuesday July 9th. I will pick up the external drive then. I request that the information be provided at that time. The law is clear 5 business days.

Thank You

Leonard McCubbin



EXHIBIT F

From: Leonard McCubbin [REDACTED]

Date: Wed, Jul 10, 2019 at 9:44 AM

Subject: Re: Freedom of Information Act request to Wesley Township dated July 1, 2019

To: Wesley twp2017 <wesleytwp2017@outlook.com>, Wesley Super2017 <wesleysuper2017@outlook.com>

This FOIA request is long overdue. I need it TODAY. What time today can I pick it up at the Township Hall?

Thank You
Leonard McCubbin

